

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85924742
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
ARGUMENT(S)	
<p>On September 17, 2014, Applicant filed a petition to cancel the NICO MYRIAD mark, Reg. No. 3,761,740, (Proceeding No. 92059952) (the "Cancellation"), which mark the Examining Attorney cited as a bar to registration of Applicant's mark under Section 2(d) of the Lanham Act. Given the 2(d) refusal to register, the Cancellation is relevant to the registrability of Applicant's mark as the basis for the refusal will no longer apply in the event the registration for the NICO MYRIAD mark is successfully cancelled. As a result, and pursuant to TMEP Sec. 716.02(d) and 37 C.F.R. Sec. 2.67, Applicant respectfully requests that the prosecution of Applicant's mark be suspended pending final disposition of the Cancellation.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_6512547210-20140918170910148705_.ttabvue-92059952-CAN-2.pdf
CONVERTED PDF FILE(S) (6 pages)	\\TICRS\EXPORT16\IMAGEOUT16\859\247\85924742\xml8\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\859\247\85924742\xml8\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\859\247\85924742\xml8\RFR0004.JPG
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DESCRIPTION OF EVIDENCE FILE	a copy of the Petition to Cancel (Cancellation No. 92059952)
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Joshua G. Gigger/
SIGNATORY'S NAME	Joshua G. Gigger

SIGNATORY'S POSITION	Attorney of record, Utah bar member
SIGNATORY'S PHONE NUMBER	801-328-3131
DATE SIGNED	09/18/2014
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Sep 18 17:10:50 EDT 2014
TEAS STAMP	USPTO/RFR-65.125.47.210-2 0140918171050582603-85924 742-5008e91fd36dd401a73b7 a1b0a224ec335afd6efd29326 3de661e444ee296ced30-N/A- N/A-20140918170910148705

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85924742** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

On September 17, 2014, Applicant filed a petition to cancel the NICO MYRIAD mark, Reg. No. 3,761,740, (Proceeding No. 92059952) (the "Cancellation"), which mark the Examining Attorney cited as a bar to registration of Applicant's mark under Section 2(d) of the Lanham Act. Given the 2(d) refusal to register, the Cancellation is relevant to the registrability of Applicant's mark as the basis for the refusal will no longer apply in the event the registration for the NICO MYRIAD mark is successfully cancelled. As a result, and pursuant to TMEP Sec. 716.02(d) and 37 C.F.R. Sec. 2.67, Applicant respectfully requests that the prosecution of Applicant's mark be suspended pending final disposition of the Cancellation.

EVIDENCE

Evidence in the nature of a copy of the Petition to Cancel (Cancellation No. 92059952) has been attached.

Original PDF file:

[evi_6512547210-20140918170910148705_.ttabvue-92059952-CAN-2.pdf](#)

Converted PDF file(s) (6 pages)

[Evidence-1](#)
[Evidence-2](#)
[Evidence-3](#)
[Evidence-4](#)
[Evidence-5](#)
[Evidence-6](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Joshua G. Gigger/ Date: 09/18/2014

Signatory's Name: Joshua G. Gigger

Signatory's Position: Attorney of record, Utah bar member

Signatory's Phone Number: 801-328-3131

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85924742

Internet Transmission Date: Thu Sep 18 17:10:50 EDT 2014

TEAS Stamp: USPTO/RFR-65.125.47.210-2014091817105058

2603-85924742-5008e91fd36dd401a73b7a1b0a

224ec335afd6efd293263de661e444ee296ced30

-N/A-N/A-20140918170910148705

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: September 18, 2014

Cancellation No. 92059952
Registration No. 3761740

NICO CORPORATION
250 EAST 96TH STREET
SUITE 125
INDIANAPOLIS, IN 46240

Myriad Genetics, Inc.

v.

Nico Corporation

JOSHUA G GIGGER
STOEL RIVES LLP
201 SOUTH MAIN ST
SUITE 1100
SALT LAKE CITY, UT 84111

Rochelle Adams, Paralegal Specialist:

The petitioner (plaintiff) identified above has filed a petition for cancellation of the above-identified registration owned by respondent (defendant). A service copy of the petition for cancellation was forwarded to respondent by the petitioner. An electronic version of the petition for cancellation, and of the entire proceeding, is viewable on the Board's web page via the TTABVUE link: <http://ttabvue.uspto.gov/ttabvue/>.

RESPONDENT MUST FILE AND SERVE ANSWER

As required in the schedule set forth below, **respondent must file an answer within forty (40) days from the mailing date of this order.** (For guidance regarding when a deadline falls on a Saturday, Sunday or federal holiday, *see* Trademark Rule 2.196.) Respondent's answer must comply with Fed. R. Civ. P. 8(b), must contain admissions or denials of the allegations in the petition for cancellation, and may include available

defenses and counterclaims. For guidance regarding the form and content of an answer, *see* Trademark Rule 2.114(b), and TBMP §§ 311.01 and 311.02. Failure to file a timely answer may result in entry of default judgment and the cancellation of the registration.

SERVICE OF ANSWER AND OF ALL FILINGS

The answer, and **all** other filings in this proceeding, **must** be served in a manner specified in Trademark Rule 2.119(b), and **must** include proof of service. For guidance regarding the service and signing of all filings, *see* TBMP §§ 113-113.04. As noted in TBMP § 113.03, proof of service should be in the following certificate of service form:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).

Signature _____
Date _____

The parties may agree to forward service copies by electronic transmission, e.g., e-mail. *See* Trademark Rule 2.119(b)(6) and TBMP §113.04. Pursuant to Trademark Rule 2.119(c), however, five additional days are afforded only to actions taken in response to papers served by first-class mail, "Express Mail," or overnight courier, not by electronic transmission.

LEGAL RESOURCES AVAILABLE AT WEB PAGE

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. These rules, as well as amendments thereto, the Manual of Procedure (TBMP), information on Accelerated Case Resolution (ACR) and Alternative Dispute Resolution (ADR), and many Frequently Asked Questions, are available on the Board's web page, at:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>. For a general description of Board proceedings, *see* TBMP §102.03.

FILING PAPERS ONLINE

The link to the Board's electronic filing system, ESTTA (Electronic System for Trademark Trials and Appeals), is at the Board's web page, at:

<http://estta.uspto.gov/>. The Board **strongly encourages parties to use ESTTA** for all filings. ESTTA provides various electronic filing forms; some may be used as is, and others may require attachments. For technical difficulties with ESTTA, parties may call 571-272-8500. Due to potential

technical issues, parties should not wait until the last date of a deadline for filing papers. The Board may decline to consider any untimely filing.

PETITIONER'S OBLIGATION IF SERVICE IS INEFFECTIVE

If a service copy of the petition for cancellation is returned to petitioner as undeliverable or petitioner otherwise becomes aware that service has been ineffective, petitioner must notify the Board in writing within ten (10) days of receipt of the returned copy. Notification to the Board may be provided by any means available for filing papers with the Board, but preferably should be provided **by written notice filed through ESTTA**. For guidance regarding notice of ineffective service, *see* Trademark Rule 2.111(b) and TBMP § 309.02(c)(2).

While petitioner is under no obligation to search for current correspondence address information for, or investigate the whereabouts of, any respondent petitioner is unable to serve, if petitioner knows of any new address information for the respondent, petitioner must report the address to the Board. If a petitioner notifies the Board that a service copy sent to a respondent was returned or not delivered, including any case in which the notification includes a new address for the respondent discovered by or reported to petitioner, the Board will give notice under Trademark Rule 2.118.

FORMAT FOR ALL FILINGS

Trademark Rule 2.126 sets forth the required form and format for all filings. The Board may **decline to consider** any filing that does not comply with this rule, including, but not limited to motions, briefs, exhibits and deposition transcripts.

CONFERENCE, DISCOVERY, DISCLOSURE AND TRIAL SCHEDULE

Time to Answer	10/28/2014
Deadline for Discovery Conference	11/27/2014
Discovery Opens	11/27/2014
Initial Disclosures Due	12/27/2014
Expert Disclosures Due	4/26/2015
Discovery Closes	5/26/2015
Plaintiff's Pretrial Disclosures	7/10/2015
Plaintiff's 30-day Trial Period Ends	8/24/2015
Defendant's Pretrial Disclosures	9/8/2015
Defendant's 30-day Trial Period Ends	10/23/2015
Plaintiff's Rebuttal Disclosures	11/7/2015
Plaintiff's 15-day Rebuttal Period Ends	12/7/2015

PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE

As noted in the schedule above, the parties are required to schedule and to participate with each other in a discovery conference by the deadline in the schedule. For guidance, *see* Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2), and TBMP § 401.01. In the conference, the parties are required to discuss (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling or at least narrowing the scope of claims or defenses, and (3) arrangements for disclosures, discovery and introduction of evidence at trial, if the parties are unable to settle at this time.

Discussion of amendments of otherwise prescribed procedures can include limitations on disclosures and/or discovery, willingness to stipulate to facts, and willingness to stipulate to more efficient options for introducing at trial information or materials obtained through disclosures or discovery.

The parties must hold the conference in person, by telephone, or by any means on which they agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such request is made no later than ten (10) days prior to the conference deadline. *See* Trademark Rule 2.120(a)(2). A request for Board participation must be made either through an ESTTA filing, or by telephone call to the assigned interlocutory attorney whose name is on the TTABVUE record for this proceeding. A party should request Board participation only after the parties have agreed on possible dates and times for the conference. A conference with the participation of a Board attorney will be by telephone, and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the Board attorney.

PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION

The Board's Standard Protective Order is applicable, and is available at: <http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>.

During their conference, the parties should discuss whether they agree to supplement or amend the standard order, or substitute a protective agreement of their choosing, subject to approval by the Board. *See* Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect a party's confidential information and its provisions for the designation of confidential information must be utilized as needed by the parties.

ACCELERATED CASE RESOLUTION

During their conference, the parties should discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to follow the Board's Accelerated Case Resolution (ACR) process for a more efficient and economical means of obtaining the Board's determination of the proceeding. For guidance regarding ACR, *see* TBMP § 528. Detailed information on ACR, and examples of ACR cases and suggestions, are available at the Board's webpage, at: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

DISCOVERY AND INTERLOCUTORY PROCEDURES

For guidance regarding discovery, *see* Trademark Rule 2.120 and TBMP Chapter 400, regarding the deadline for and contents of initial disclosures, *see* Trademark Rule 2.120(a)(2) and TBMP § 401.02, and regarding the discoverability of various matters, *see* TBMP § 414. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. The interlocutory attorney has discretion to require the parties, or to grant a request made by one or both parties, to resolve matters of concern to the Board, or a contested motion, by telephone conference. *See* Trademark Rule 2.120(i)(1) and TBMP § 502.06(a).

TRIAL

For guidance regarding trial and testimony procedures, *see* Trademark Rules 2.121, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review authorities regarding the introduction of evidence during the trial phase, including by notice of reliance and by taking testimony from witnesses. For instance, any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties, and any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on each adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after completion of the testimony deposition.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon request of any party, pursuant to Trademark Rule 2.129. For guidance regarding briefing and an oral hearing, *see* TBMP §§ 801-802.

PARTIES NOT REPRESENTED BY COUNSEL

This proceeding is similar to a civil action in a federal district court. The Board **strongly** advises all parties to secure the services of an attorney who is familiar with trademark law and Board procedure. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. Parties not represented by such an attorney are directed to read the Frequently Asked Questions, available at the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

PARTIES MUST NOTIFY BOARD OF OTHER PENDING ACTIONS

If the parties are, or during the pendency of this proceeding become, parties in another Board proceeding or a civil action involving the same or related marks, or involving any issues of law or fact which are also in this proceeding, they shall notify the Board immediately, so the Board can consider whether consolidation and/or suspension of proceedings is appropriate. *See* TBMP § 511.